

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221178

DATE: December 10, 1985

MATTER OF: Roger C. Froling

DIGEST:

When a protest has been filed initially with the contracting agency, any subsequent protest to GAO, to be timely, must be filed within 10 working days of notification of or actual or constructive knowledge of initial adverse action on the agency-level protest. The fact that protester continues to pursue the matter with the agency does not toll the running of the 10-day requirement.

Roger C. Froling protests the award of a lease contract for office space to Farm Credit Services of Mid Michigan under a solicitation issued by the Department of Agriculture. Froling essentially complains that the agency improperly evaluated bids to his prejudice. We dismiss the protest as untimely.

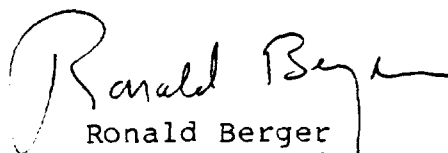
Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), specifically provide that if a protest has been filed initially with the contracting agency, any subsequent protest to this Office must be filed (received) within 10 working days of formal notification of or actual or constructive knowledge of initial adverse action on the agency-level protest. "Adverse agency action" is any action or inaction on the part of the contracting agency which is prejudicial to the position taken in a protest filed with the agency, and necessarily includes a decision on the merits of the protest. 4 C.F.R. § 21.0(e).

Here, Froling filed a protest with the agency challenging the propriety of the award on October 10, 1985. By letter dated November 1, received by Froling on November 4, the agency addressed the essential issues raised by Froling and stated that no purpose would be served by suspending or terminating the award. On the

same day that he received the agency's letter, Froling filed another protest with the agency and asked for a final decision in the matter. By letter dated November 14, received by Froling on November 18, the agency referred to its earlier communication and again stated that no justification could be found for overturning the award decision. Froling then filed a protest with this Office on November 26, which Froling asserts is timely because it was filed within 10 working days of receipt of the agency's final response. We do not agree.

It is clear that the agency's response of November 1 constituted initial adverse agency action because, by advising Froling that no action would be taken in response to the protest, it was effectively a denial on the merits. Therefore, it was incumbent upon Froling to file any subsequent protest to this Office within 10 working days of November 4, the date of receipt of this response. The fact that Froling continued to pursue the matter with the agency beyond that point is of no consequence, since it is well-settled that continued pursuit of a matter with the agency following initial adverse agency action does not toll our filing requirements. Hartridge Equipment Corp., B-219982, Sept. 11, 1985, 85-2 CPD ¶ 286. Hence, because November 4, and not November 18, the date Froling received the agency's final response, was the operative date to trigger the 10-day filing period imposed by our regulations, Froling's subsequent protest to this Office is untimely and will not be considered.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel